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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/640,553

08/13/2003

Randal Alan Stevens

7173/118

8361

38356 7590 02/21/2008
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EXAMINER

VARGOT, MATHIEU D

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

02/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/640,553

Applicant(s)

STEVENS, RANDAL ALAN

Examiner

Mathieu D. Vargot

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Period for Reply
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 8-18 and 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 19-21 and 26 is/are rejected..
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-7, 19-21 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 26 have been amended to recite that the negative mold has an inside surface "with dimensions the same as the dimensions of the auditory canal" and there is no direct support for this. Indeed, the specification supports that the inside surface has the same dimensions as the **outside** dimensions of the auditory canal, not just "the dimensions". Applicant needs to provide support for where dimensions in general is disclosed, or insert the language —outside— as appropriate.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 7, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al essentially for reasons of record noting the following. While Widmer et al does not explicitly teach making a hearing aid mold from the processed data—the applied reference instead makes a shell that would hold the components of the hearing aid—applicant is referred to column 1, lines 20-27 of Widmer et al. In that disclosure, the reference teaches that it is known in the art to "produce a model of the shape of the individual auditory canal, thereby taking a mold thereof,

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typically of silicon. This model is then sent to the hearing aid manufacturer...who casts a hearing aid shell from a plastic material.” If it is known to make a mold from the dimensions of the auditory canal, then surely such would have been an obvious modification to the general process disclosed in Widmer et al used to make a hearing aid shell. While Widmer et al may desire to make the shell directly from the digital information, obviousness only requires a reasonable expectation of success, not an assurance. Based on the disclosure of the prior art in Widmer et al, it is respectfully submitted that making a negative mold-- instead of a shell —from the digital information would have been an obvious modification to Widmer et al so that one could make the shell of materials different than those used to make the mold. Also, if it is known to make a product directly from digital data, it surely would have been obvious to make a mold from that data and then make the product from that mold. This kind of processing is notoriously well known in the art and performed regularly in order to tailor the materials used for the final product.

3. Claims 3-5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al in view of Rubbert et al for reasons of record as set forth in paragraph 2, supra, and paragraph 5 of the previous action.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer et al in view of Jordan et al for reasons of record as set forth in paragraph 2, supra, and paragraph 6 of the previous action.

5. Applicant's arguments filed November 21, 2007 have been fully considered but they are not persuasive. Applicant suggest that Widmer et al does not provide a prime

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facie case of obviousness since the reference does not meet the claim limitations as amended. However, such is not agreed with. For one thing, the claims as amended are not believed to be supported by the specification as originally filed. It appears to be the outside dimensions of the auditory canal that are reproduced and that would have to be reproduced to make the mold, not just dimensions in general. At any rate, based on the prior art of Widmer et al, it is submitted that one of ordinary skill in this art would have found making a mold or model from auditory canal dimensions—whatever they are-- and then making the shell therefrom as an obvious modification to simply making the shell from such dimensions. Regardless of whether a shell would serve as a mold, Widmer et al provides a clear disclosure that the prior art knows to make an otoplastic shell from a mold fashioned from the dimensions of the auditory canal. Again, obviousness only requires a reasonable expectation of success and it is submitted that the prior art statement of Widmer et al (see col. 1, lines 20-27) provides such an expectation.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
February 17, 2008


Mathieu D. Vargot
Primary Examiner
Art Unit 1791

2/17/08